



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

THE RULES DIGEST

May 2014

Scheduled for Committee review Tuesday, May 13th, 2014 Room #116

Reference XXXVI IAB No. 21(04/16/14) XXXVI IAB No. 22(04/30/14)

HIGHLIGHTS IN THIS ISSUE:

REINVESTMENT DISTRICTS PROGRAM, Revenue Department 1
NUTRITIONAL CONTENT STANDARDS, Education Department 2
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IMPROPER BILLING, Public Defender 4

REVENUE DEPARTMENT

9:10

Reinvestment Districts Program, 04/30/14 IAB, ARC 1443C, ADOPTED.

A companion set of rules was adopted by the Economic Development Authority in 2013; it was not controversial. Both sets of rules implement 2013 Iowa Acts, House File 641. This new program, the Iowa Reinvestment Act, provides up to \$100 million in certain state hotel and motel and sales tax revenues to be "reinvested" into designated reinvestment districts. The program allows municipalities to designate an area of up to 25 acres within the corporate boundary as reinvestment districts and to use new tax revenues collected within the district to finance the development of projects within the district. The area must consist of contiguous parcels and not exceed 25 acres in total. Eligible projects must be of a unique nature and must be likely to have a substantial beneficial impact on the economy of the state and the economy of the municipality. At least one of the projects must include a capital investment of at least \$10 million.

Under the Act, a state reinvestment district fund is established in the state treasury under the control of the department consisting of the new state sales tax revenues collected within each district and the new state hotel and motel tax revenues collected within each district. The department calculates the state sales tax and hotel and motel tax funding under the program and remits that funding to governmental entities with eligible districts. The amount of new tax revenue is the product of the amount of sales

subject to the sales tax in the district during the quarter from “new retail establishments”, multiplied by 4 percent. The amount of new state hotel and motel tax revenue is the product of the amount of sales subject to the state hotel and motel tax in the district during the quarter from “new lessors”, multiplied by the state hotel and motel tax rate.

20 years after the district’s commencement date, the department will cease deposits of tax revenues into the district’s account within the fund, unless the municipality dissolves the district by ordinance prior to that date. Once the maximum benefit amount approved by the board for the district has been reached, the department will cease deposits of new tax revenues into the district’s account.

COLLEGE AID COMMISSION

9:55

Teach Iowa scholar program, 04/16/14 IAB, [ARC 1409C](#), NOTICE.

This grant program is available to persons who have 1) graduated in the top 25 percent academically of students completing teacher preparation programs, and 2) are teachers providing instruction on a full-time basis in “hard to staff” subject matters, as specified by the Department. The maximum annual award is \$4,000, with a cap of \$20,000 over a five-year period.

EDUCATION DEPARTMENT

10:05

Nutritional content standards, 04/30/14 IAB, ARC 1432C, ADOPTED.

Rule 58.11 was first adopted in 2009, specifying dietary standards, which include limitations on sodium, calories, fats and trans-fat, sugar, and sports drinks, and prohibiting carbonated beverages. Caffeinated beverages and sports drinks cannot be available to elementary students.

The February 2014 notice of intended action eliminated a previously adopted chart entirely and simply referred to specific federal standards. The standards for food and beverages in the federal rules are the minimum standards that local school districts are required to meet. State agencies or local school districts may establish their own standards for non-program foods sold to children, as long as such standards are consistent with the federal standards. This proposal was very controversial; in effect it automatically adopted whatever nutrition standard put in place by the federal

government. Committee members believed these standards should be specifically set out in rule.

In the final adoption the Department has returned to the chart format.

EDUCATION DEPARTMENT

10:05

Supplementary weighting, EMERGENCY RULEMAKING--for committee approval.

This rulemaking implements 2014 Iowa Acts, HF2271 and SF2056, which made significant changes to the state operational sharing law. In operational sharing, districts share personnel in listed positions under the law and receive additional state payment for doing so. The Committee imposed a session delay on a prior rulemaking on this subject implementing 2013 Iowa Acts, HF 472, when questions arose as to whether that rulemaking was in keeping with legislative intent. That delay expired with the adjournment of the 2014 General Assembly. The 2014 enactments, pursued in consultation with affected stakeholders, sought to resolve the dispute from the previous year. This emergency rulemaking implementing those enactments will bring clarity to the law in this area.

ECONOMIC DEVELOPMENT AUTHORITY (EDA)

10:20

Job creation and capital investment shortfalls, 04/16/14 IAB, [ARC 1430C](#), NOTICE.

This notice of intended action has a variety of updates and revisions for several programs. A number of tax-credit programs are subject to caps; the proposed amendments lower the cap level from \$185 to \$170 million annually. The EDA may exceed the cap by 20% in a given year, but that excess will be deducted from the following years credits.

General contracting requirements relating to job creation and capital investment shortfalls are updated. If a business has a shortfall in both capital investment and job creation requirements, the repayment is the same proportion as the higher-percentage shortfall. If a business fails to meet wage and benefit requirements, the business is required to repay all of the incentives received during the year in which the business was not in compliance.

The notice adds new provisions relating to “compliance cost fees” for the high quality jobs program and the enterprise zone program. These fees are mandated in 2013 Iowa

Acts, chapter 126. Prior to the issuance of a tax credit certificate or financial assistance, the recipient must pay a \$500 fee. Tax incentives with a value of \$100,000 or more are subject to an annual compliance cost fee equal to .50% of the value of the tax incentives. The fees apply to the high quality jobs program and the enterprise zone program.

ENGINEERING EXAMINERS

10:45

Conflict of interest, 04/30/14 IAB, ARC 1441C, NOTICE.

This issue dates back to September 2012. At issue are conflict-of-interest restrictions on soliciting or accepting an engineering or land surveying contract from a governmental body when a principal or officer of the licensee's organization serves as a member of that governmental body.

The board ultimately formed a stakeholder group to resolve the issue, which is set out in this proposal. The notice eliminates most of the current detail of the rule, and adds a simple principle: "A licensee would not violate this provision, however, if the principal or officer of the licensee's organization who serves as a member of the governmental body plays no role in the solicitation or acceptance of the contract, and the contract would be legally permissible under applicable Iowa law..."

ENVIRONMENTAL PROTECTION COMMISSION (EPC)

10:55

Concentrated animal feeding operations, 04/16/14 IAB, [ARC 1421C](#), NOTICE.

Code §459.311 provides that confinement feeding operations that are concentrated animal feeding operations (CAFOs) must comply with applicable National Pollutant Discharge Elimination System (NPDES) permit requirements. A CAFO is an animal feeding operation that confines animals for more than 45 days during a growing season, is located in an area that does not produce vegetation, and meets certain size thresholds set out in federal rules.

The owner or operator of a CAFO must obtain an NPDES permit if the CAFO discharges is designed, constructed, operated, or maintained such that a discharge will occur.

STATE PUBLIC DEFENDER

11:35

Improper billing practices, 04/30/14 IAB, [ARC 1437C](#), NOTICE.

This proposal adds significant detail to existing rules, and provides a number of safeguards to prevent improper billing. They set a maximum number of aggregate hours that an attorney can bill in a day, require detailed itemized time and expense reimbursement records, establish additional documentation requirements for claims of attorneys whose contracts were canceled for improper billing practices, and clarify the prohibition on other improper practices.

The proposal clearly states that claims shall only be paid for services and expenses incurred within the scope of the court appointment, and only after the service is rendered; other fees or expenses claimed will be denied. All billed time must be the actual time worked providing services to the client; estimated billing is prohibited. Billable time is limited to 12 hours a day, except for a trial or hearing, where the maximum is 16 hours.

Under the existing rules, claims that are “not reasonable or not appropriate” will be denied. Under the proposal, such claims will be “reduced by the state public defender to an amount which is not excessive.”

Non-billable services include: clerical work, including photocopying; work performed to withdraw from a case; general overhead; and preparation document or petitions related to the attorney fee claim. Travel time and mileage costs directly related to representing the client are an allowable expense.

STATE PUBLIC DEFENDER

11:35

Attorney contracts, 04/30/14 IAB, [ARC 1438C](#), NOTICE.

There are a variety of indigent defense contracts available, with different qualifications for each type of defense. Participating attorneys are independent contractors, not state employees. Six types of contracts are available: juvenile cases; appellate cases; postconviction relief cases at the trial level; class A and B felony cases at the trial level; class C and D felony cases at the trial level, and 2nd counsel class A felony cases; and misdemeanor cases, probation and parole revocation cases, contempt proceedings. Each of these categories requires relevant training and experience, as set out in the rules.

